



United States Government
NATIONAL LABOR RELATIONS BOARD
Region 50

(123) 123-4567
Fax: (123) 123-4568

March 30, 2011

John Smith, Attorney
United Widgets Union
6789 First Ave.
Anywhere, USA 12345

Re: ABC Company
50-CA-12345, 50-CA-12346,
and 50-CA-12347

Dear Mr. Smith:

The Region has carefully investigated and considered your charges in the above matter which allege violations under Section 8 of the National Labor Relations Act.

Decision to Dismiss: Based upon that investigation, I have concluded that further proceedings are not warranted, and I am dismissing the following portions of your charges since there is insufficient evidence to establish a violation. Subsequent action will be taken on the remaining allegations.

50-CA-12345. The following allegations of this charge are being dismissed for the following reasons:

- Allegation 1 – This section of the charge alleges that on or about early February 2011, the Employer violated Sec. 8(a)(1) and (2) by promoting the selection of one union over another and by advising employees to wait one year and if they were still unhappy they could obtain representation another Union. The evidence is insufficient to establish that as to this matter the Employer exceeded the bounds of Section 8(c) in the comments and presentations of its supervisors and agents.
- Allegation 3 – This portion of the charge alleges violations of 8(a)(1) and (2) in the February 28, 2011 distribution of a flyer supporting ABC Local 123. The evidence is insufficient to establish that the Employer created or caused the distribution in of such flyers.

- Allegation 4 – This section of the charge pertains to Service Manager John Doe’s alleged January 2011 interrogation of employees regarding the election’s outcome. The evidence is insufficient to establish a violation in the absence of detail and testimonial context regarding this allegation.
- Allegations 5 and 6 -- These allegations pertain to February 2011 statements regarding job loss, loss of benefits, and futility of bargaining. The evidence was insufficient to establish that the statements attributed to the Employer’s supervisors and agents exceeded the bounds of Section 8(c).
- Allegation 8 -- This section of the charge alleges that on or about February 28, 2011, Sally Smith implicitly promised benefits by stating at a meeting with employees that the Employer would take care of them if they voted against United widgets Union. The evidence was insufficient to establish that the statements attributed to the Employer’s supervisors and agents in this instance exceeded the bounds of Section 8(c).
- Allegation 11 – This section of the charge pertains to a February 28, 2011 flyer containing a message on how to “save your job, house, car, etc. . . .” The evidence is insufficient to establish that the Employer created or caused the distribution of the flyer.

50-CA-12346. The following allegation of this charge is being dismissed for the following reasons:

- Allegation 5 – This section of the charge alleges that on January 27, 2011, Service Manager John Doe threatened to charge Bill White with an “early quit” if he left work early to get some rest in preparation for testifying at the objections hearing in 50-RC-11111. The evidence was insufficient to establish that employees were allowed to leave early without consequence under similar circumstances.

50-CA-12347. As more fully explained below, this charge is being dismissed in its entirety.

- Allegation 1 – This section pertains to the January 16, 2011 discharge of Richard Small. The evidence was insufficient to controvert the Employer’s contention that Small, who was on a last-chance agreement in view of an earlier work incident, was discharged for causing significant damage to a forklift.
- Allegation 2 – This section pertains to the December 1, 2010 discharge of William Black. The evidence was insufficient to controvert the Employer’s contention that Black, who also was on a last-chance agreement, was discharged for serious misconduct in violation of the Employer’s well-established rules.

Your Right to Appeal: The National Labor Relations Board Rules and Regulations permit you to obtain a review of this action by filing an appeal with the GENERAL COUNSEL of the National Labor Relations Board. Use of the Appeal Form (Form NLRB-4767) will satisfy this requirement. However, you are encouraged to submit a complete statement setting forth the facts and reasons why you believe that the decision was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, or by a delivery service. The appeal MAY NOT be filed by fax. Filing an appeal electronically is preferred but not required. To file an appeal electronically, go to the Agency's website at www.nlr.gov, click on **E-GOV**, select **E-Filing**, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14th Street, N.W., Washington D.C. 20570-0001. Unless filed electronically, a copy of the appeal should also be sent to the Regional Director.

Appeal Due Date and Time: The appeal is due on January 13, 2010. If you file the appeal electronically it will be considered timely filed if the transmission of the entire document through the Agency's website is accomplished **no later than 11:59 p.m. Eastern Time** on the due date. If you mail the appeal or send it by a delivery service it must be received by the General Counsel in Washington, D.C. by the close of business at **5:00 p.m. Eastern Time** or be postmarked or given to the delivery service no later than one day before the due date.

Extension of Time to File Appeal: Upon good cause shown, the General Counsel may grant you an extension of time to file the appeal. A request for an extension of time may be filed electronically, by fax, by mail, or by delivery service. To file electronically, go to www.nlr.gov, click on **E-Gov**, select **E-Filing**, and follow the detailed instructions. The fax number is (202) 273-4283. A request for an extension of time to file an appeal **must be received on or before the original appeal due date**. A request for an extension of time that is mailed or given to the delivery service and is postmarked or delivered to the service before the appeal due date but received after the appeal due date will be rejected as untimely. Unless filed electronically, a copy of any request for extension of time should be sent to the Regional Director.

Confidentiality/Privilege: Please be advised that we cannot accept any limitations on the use of any appeal statement or evidence in support thereof provided to the Agency. Thus, any claim of confidentiality or privilege cannot be honored, except as provided by the FOIA, 5 U.S.C. 552, and any appeal statement may be subject to discretionary disclosure to a party upon request during the processing of the appeal. In the event the appeal is sustained, any statement or material submitted may be subject to introduction as evidence at any hearing that may be held before an administrative law judge. Because we are required by the Federal Records Act to keep copies of documents used in our case handling for some period of years after a case closes, we may be required by the FOIA to disclose such records upon request, absent some applicable exemption such as those that protect confidential source, commercial/financial information or personal privacy interests (e.g., FOIA Exemptions 4, 6, 7(C) and 7(d), 5 U.S.C. § 552(b)(4), (6), (7)(C), and (7)(D)). Accordingly, we will not honor any requests to place limitations on our use of appeal statements or supporting evidence beyond those prescribed by the foregoing laws, regulations, and policies.

Notice to Other Parties of the Appeal: You should notify the other party(ies) to the case that an appeal has been filed. Therefore, at the time the appeal is sent to the General Counsel, please complete the enclosed Appeal Form (NLRB-4767) and send one copy of the form to all parties whose names and addresses are listed.

Very truly yours,

Jane Jones
Regional Director

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Enclosure: Notice of Appeal – Form NLRB 4767

cc:

General Counsel
Attn: Office of Appeals
NLRB
Washington, DC 20570

William Lee, Attorney
Law Firm
123 A Street
Anywhere, USA 12345

Mr. David Davis
ABC Company
5000 First Ave.
Anywhere, USA 12345

Ms. Jane Smith
International Widgets Union
P.O. Box 1212.
Anywhere, USA 12345

